

26400 La Alameda, Suite 200 • Mission Viejo, CA 92691  
Phone (949) 582-2100 Fax (949) 582-8301

sbennett@letwakbennett.com

March 21, 2011

Rick Bennion  
Chief, Board Proceedings Division  
State Board of Equalization  
450 N Street  
Sacramento, CA 95814

Re: Petitions to 1) Amend BOE Rules 462.060, 462.100, 462.160,  
462.180, and 462.260 for Due Process, and 2) Depublish Annotations  
that Apply Change In Ownership Law Retrospectively

Dear Mr. Bennion:

## I. Introduction

I respectfully petition BOE to amend various BOE Rules to prohibit assessors from violating the due process rights of real property taxpayers who acquired their interests in real property prior to the enactment of Part 0.5 of the Property Tax Division of the Revenue & Taxation Code.

I also separately petition BOE to compel its legal staff to depublish all annotations that apply Part 0.5 retrospectively.

Part 0.5 was first enacted in the late 1970s following Proposition 13. At the time Part 0.5 was enacted, real property ownership was already held in a number of ways (e.g., leaseholds, irrevocable trusts, life estates, estates for years, in corporations, in partnerships, etc) by a variety of beneficial owners (e.g., lessors, lessees, life estate holders, trust income beneficiaries, trust remainder beneficiaries, shareholders, partners, etc), collectively referred to hereinafter as “**Pre-Enactment Owners**”.

There is nothing in any of the sections in Part 0.5 of the Property Tax Division of the Revenue and Taxation Code, or in any of BOE Rules 460-467, to lead anyone to believe the legislature or this board intended any statute or rule to apply retrospectively.<sup>1</sup> In fact, the contrary is true. Our country’s common law, as endorsed by the US Supreme

---

<sup>1</sup> “A statute is said to have a retroactive or retrospective effect when it is construed so as to relate back to a previous transaction and give the transaction a legal effect different from that which prevailed under the law when it occurred.” *Industrial Indem. Co. v. Teachers’ Retirement Bd.* (1978) 86 Cal. App. 3d 92, 97.

Court in an opinion written by Justice Rehnquist<sup>2</sup>, mandates that any new statute or regulation must be applied only prospectively, not retrospectively.

When a county assessor applies Part 0.5 retrospectively (i.e., against the interests of a **Pre-Enactment Owner**), the assessor deprives the **Pre-Enactment Owner** of his or her right to due process guaranteed by the US Constitution. When BOE legal staff interprets Part 0.5 as applying retrospectively, legal staff misinterprets Part 0.5.

## **II. Erroneous BOE Annotations**

### **A. BOE Has Erroneously Advised Assessors and Taxpayers that Property Tax Statutes Apply Retrospectively**

There would be no need for this petition if BOE in its annotations over the years had correctly advised assessors and property taxpayers that Part 0.5 must be applied only prospectively, not retrospectively.

However, in its annotations BOE has never given any such advice.

To the contrary, in each BOE annotation where BOE considers the interests of a **Pre-Enactment Owner**, BOE misinterprets—either expressly or impliedly—Part 0.5 as applying retrospectively against the interests of the **Pre-Enactment Owner**. Examples include, but are not limited to:

220.0325, 220.0326, 220.0338, 220.0332.005 [BOE erroneously applies Part 0.5 retrospectively against the interests of property owners who leased property to tenants in 1962, 1961, 1958, and 1940, respectively]

220.0780 and 220.0786 [BOE erroneously applies Part 0.5 retrospectively against the interests of trust remaindermen who acquired their vested interests in 1974 and 1962, respectively].

---

<sup>2</sup> “The principle that statutes operate only prospectively ... is familiar to every law student. (citations) This Court has often pointed out that the first rule of construction is that legislation must be considered as addressed to the future, not to the past.... The rule has been expressed in varying degrees of strength but always of one import, that a *retrospective operation will not be given to a statute which interferes with antecedent rights* ... unless such be the unequivocal and inflexible import of the terms, and the manifest intention of the legislature. (citations) ... The presumption is very strong that a statute was not meant to act retrospectively, and it ought never to receive such a construction if it is susceptible of any other.” *U.S. v. Security Indus. Bank* 459 U.S. 70, 79-80, 103 S.Ct. 407, 413 (U.S., 1982) [italics and boldface added]

**B. Petitioner Has Requested that BOE Depublish All Erroneous Annotations**

At this board's meeting on January 27, 2011, petitioner requested BOE board members to instruct, and the members did then instruct, BOE legal staff to depublish all legally-flawed annotations.

In subsequent communications between petitioner and BOE legal staff, primarily by e-mail, petitioner asked legal staff to depublish each annotation listed above, as well as all other annotations in which BOE erroneously advises assessors and real property taxpayers that Part 0.5 is applied retrospectively against the interests of **Pre-Enactment Owners**.

**C. BOE Legal Staff Refuses to Depublish Annotations by Erroneously Interpreting the Steinhart Opinion**

On 3/18/11 BOE legal staff refused to depublish the annotations listed above by arguing that the annotations are consistent with the California Supreme Court opinion in *Steinhart*.

Respectfully, petitioner contends BOE legal staff erroneously interprets *Steinhart*.

In annotations 220.0780 and 220.0786 BOE opines that a remainderman's interest does not vest for property tax purposes, and no change in ownership occurs, when the governing instrument first becomes irrevocable. In *Steinhart*, our high court found otherwise.

BOE must accept the findings in *Steinhart* as correct. BOE should realize that it can no longer contend that a remainderman's taking of actual possession constitutes a reassessable change in ownership. Why? Two reassessments of the remainderman's interest on two different dates violates the remainderman's constitutional right to due process as codified by our legislature's ban on "double taxation" in R&T §102.

A proper interpretation of *Steinhart* and R&T §102 should compel BOE to depublish all annotations.

### **III. Proposed Amendment to Rule 462.060 – Life Estates and Estates for Years**

Following is petitioner's proposed amendment to Rule 462.060 in strike-out and underscore format:

(a) Life estates. The creation of a life estate in real property is a change in ownership at the time of transfer unless the instrument creating the life estate reserves such estate in the transferor or the transferor's spouse. However, the subsequent transfer of such a life estate by the transferor or the transferor's spouse to a third party is a change in ownership. Upon termination of such a reserved life estate, the vesting of a right of possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership.

(b) Estate for years. The creation of an estate for years for a term of 35 years or more in real property is a change in ownership at the time of transfer unless the instrument creating the estate for years reserves such estate in the transferor or the transferor's spouse. However, the subsequent transfer of such an estate for years by the transferor or the transferor's spouse to a third party is a change in ownership. Upon the termination of a reserved estate for years for any term, the vesting of the right to possession or enjoyment of a remainderman (other than the transferor or the transferor's spouse) is a change in ownership. The creation or transfer of an estate for years for less than 35 years is not a change in ownership.

**(c) Notwithstanding any provision in property tax law to the contrary, due process prohibits an assessor from reassessing trust real property as a change in ownership upon termination of a life estate or estate for years if the life estate or estate for years commenced prior to the effective date of Part 0.5 of the Property Tax Division of the Revenue & Taxation Code.**

### **IV. Proposed Amendment to Rule 462.100 - Leases**

Following is petitioner's proposed amendment to Rule 462.100 in strike-out and underscore format:

462.100. Change in Ownership – Leases

(a) The following transfers of either the lessee's interest or the lessor's interest in taxable real property constitute a change in ownership of such real property:

(1) Lessee's Interest:

(A) the creation of a leasehold interest in real property for a term of 35 years or more.

(B) the transfer, sublease, or assignment of a leasehold interest with a remaining term of 35 years or more.

(C) the termination of a leasehold interest which had an original term of 35 years or more.

(2) Lessor's Interest:

(A) The transfer of a lessor's interest in taxable real property subject to a lease with a remaining term of less than 35 years.

(B) The transfer of a lessor's interest in taxable real property subject to multiple leases, one or more of which is for a remaining term of less than 35 years and one or more of which is for a remaining term of 35 years or more, in which case there is a change in ownership of the portion of the property subject to the lease(s) with a remaining term of less than 35 years.

(b) The following transfers of either the lessee's interest or the lessor's interest in taxable real property do not constitute a change in ownership of such real property.

(1) Lessee's interest:

(A) The creation of a leasehold interest in real property for a term of less than 35 years.

(B) The transfer, sublease, or assignment of a leasehold interest with a remaining term of less than 35 years (regardless of the original term of the lease).

(C) The termination of a leasehold interest which had an original term of less than 35 years.

(2) Lessor's interest:

(A) The transfer of a lessor's interest in real property subject to a lease with a remaining term of 35 years or more, whether to the lessee or another party.

(c) Once a change in ownership of taxable real property subject to a lease has been deemed to have occurred, the entire property subject to the lease is reappraised (i.e., the value of both the lessee's interest and the reversion).

(d) The calculation of the term of a lease for all purposes of this section shall include written renewal options.

(e) It shall be conclusively presumed that all homes (other than mobilehomes subject to Part 13 of Division 1 of the Revenue and Taxation Code) eligible for the homeowners' exemption which are on leased land have written renewal options on the lease of such land of at least 35 years, whether or not such renewal options in fact exist in any contract or agreement.

**(f) Due process. Notwithstanding any provision in property tax law to the contrary, when a lease was entered into prior to the effective date of Part 0.5 of the Property Tax Division of the Revenue & Taxation Code, due process prohibits an assessor from treating any termination, transfer, or assignment of such lease as a reassessable change in ownership.**

## **V. Proposed Amendment to Rule 462.160 - Trusts**

The proposed amendment to Rule 462.160 is intended to achieve two goals:

The first goal is to prohibit an assessor from retrospectively applying Part 0.5 of the Revenue & Taxation Code against the interests of a trust beneficiary those interests were vested prior to the effective date of Part 0.5.

The second goal is to prohibit an assessor who has reassesses real property as a change in ownership upon the receipt by a trust remainderman of a vested interest after the effective date of Part 0.5 from reassessing that remainderman's interest a second time. Two reassessments of the remainderman's interests on two different dates violates the remainderman's constitutional right to due process as codified by our legislature's ban on "double taxation" in R&T §102.

Following is petitioner's proposed amendment to Rule 462.160 in strike-out and underscore format:

(a) Creation. General Rule. The transfer by the trustor, or any other person, of real property into a trust is a change in ownership of such property at the time of the transfer.

(b) Exceptions. The following transfers do not constitute changes in ownership:

(1) Irrevocable Trusts.

(A) Trustor-Transferor Beneficiary Trusts. The transfer of real property by the trustor to a trust in which the trustor-transferor is the sole present beneficiary of the trust. However, a change in ownership of trust property does occur to the extent that persons other than the trustor-transferor are or become present beneficiaries of the trust unless otherwise excluded from change in ownership.

Example 1: M transfers income-producing real property to revocable living Trust A, in which M is the sole present beneficiary. Trust A provides that upon M's death, Trust A becomes irrevocable, M's brother B becomes a present beneficiary, and income from the trust property is to be distributed to B for his lifetime. Upon M's death, 100% of the property in Trust A, representing B's present beneficial interest, undergoes a change in ownership.

Where a trustee of an irrevocable trust has total discretion ( "sprinkle power") to distribute trust income or property to a number of potential beneficiaries, the property is subject to change in ownership, because the trustee could potentially distribute it to a non-excludable beneficiary, unless all of the potential beneficiaries have an available exclusion from change in ownership.

Example 2: H and W transfer real property interests to the HW Revocable Trust. No change in ownership. HW Trust provides that upon the death of the first spouse the assets of the deceased spouse shall be distributed to "A Trust", and the assets of the surviving spouse shall be distributed to "B Trust", of which surviving spouse is the sole present beneficiary. H dies and under the terms of A Trust, W has a "sprinkle" power for the benefit of herself, her two children and her nephew. When H dies, A Trust becomes irrevocable. There is a change in ownership with respect to the interests transferred to the A Trust because the sprinkle power may be exercised so as to omit the spouse and the children as present beneficiaries for whom exclusions from change in ownership may apply, and there are no exclusions applicable to the nephew. However, if the sprinkle power could be exercised only for the benefit of W and her children for whom exclusions are available, the interspousal exclusion and the parent/child exclusion would exclude the interests transferred from change in ownership, provided that all qualifying requirements for those exclusions are met.

Example 3: Same as Example 2 above, except that "A Trust" is without any sprinkle power. When H dies, A Trust becomes irrevocable. Since A

Trust holds the assets for the benefit of W, the two children, and the nephew in equal shares, with any of W's share remaining at her death to be distributed to the two children and the nephew in equal shares, there is a change in ownership only to the extent of the interests transferred to the nephew, providing that the parent/child exclusion of Section 63.1 and the interspousal exclusion of Section 63 apply to the interests transferred to the two children and to W respectively. Upon the death of W, there is a change in ownership to the extent of the interests transferred to the nephew, although the parent/child exclusion of Section 63.1 may exclude from change in ownership the interests transferred to the two children. If A Trust had included a sprinkle power, instead of specifying the beneficiaries of the trust income and principal, then as in Example 2, none of the exclusions would apply.

(B) 12 Year Trustor Reversion Trusts. The transfer of real property or ownership interests in a legal entity holding interests in real property by the trustor to a trust in which the trustor-transferor retains the reversion, and the beneficial interest of any person other than the trustor-transferor does not exceed 12 years in duration.

(C) Irrevocable Trusts Holding Interests in Legal Entities. The transfer of an ownership interest in a legal entity holding an interest in real property by the trustor into a trust in which the trustor-transferor is the sole present beneficiary or to a trust in which the trustor-transferor retains the reversion as defined in subdivision (b)(1)(B) of this rule. However, a change in ownership of the real property held by the legal entity does occur if Revenue and Taxation Code section 61(i), 64(c) or 64(d) applies because the change in ownership laws governing interests in legal entities are applicable regardless of whether such interests are held by a trust.

Example 4: Husband and Wife, partners in HW Partnership who are not original coowners, transfer 70 percent of their partnership interests to HW Irrevocable Trust and name their four children as the present beneficiaries of the trust with equal shares. Husband and Wife do not retain the reversion. Under Revenue and Taxation Code section 64(a) the transfer of the partnership interests to HW Irrevocable Trust is excluded from change in ownership because no person or entity obtains a majority ownership interest in the HW Partnership.

(2) Revocable Trusts. The transfer of real property or an ownership interest in a legal entity holding an interest in real property by the trustor to a trust which is revocable by the trustor. However, a change in ownership does occur at the time the revocable trust becomes irrevocable unless the trustor-transferor remains or



becomes the sole present beneficiary or unless otherwise excluded from change in ownership.

(3) Interspousal Trusts. The transfer is one to which the interspousal exclusion applies. However, a change in ownership of trust property does occur to the extent that persons other than the trustor-transferor's spouse are or become present beneficiaries of the trust unless otherwise excluded from change in ownership.

(4) Parent-Child or Grandparent-Grandchild Trusts. The transfer is one to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been made as required by law. However, a change in ownership of trust property does occur to the extent that persons for whom the parent-child or grandparent-grandchild exclusion is not applicable are or become present beneficiaries of the trust unless otherwise excluded from change in ownership.

(5) Proportional Interests. The transfer is to a trust which results in the proportional interests of the beneficiaries in the property remaining the same before and after the transfer.

(6) Other Trusts. The transfer is from one trust to another and meets the requirements of (1), (2), (3), (4), or (5).

(c) Termination. General Rule. The termination of a trust, or portion thereof, constitutes a change in ownership at the time of the termination of the trust.

(d) Exceptions. The following transfers do not constitute changes in ownership:

(1) Prior Change in Ownership. Termination results in the distribution of trust property according to the terms of the trust to a person or entity who received a present interest (either use of or income from the property) when the trust was created, when it became irrevocable, or at some other time. However, a change in ownership also occurs when the remainder or reversionary interest becomes possessory if the holder of that interest is a person or entity other than the present beneficiary unless otherwise excluded from change in ownership.

Example 5: B transfers real property to Trust A and is the sole present beneficiary. Trust A provides that when B dies, the Trust terminates and Trust property is to be distributed equally to R and S, who are unrelated to B. B dies, Trust A terminates, and the transfers of the Trust property to R and S result in changes in ownership, allowing for reassessment of 100 percent of the real property.

(2) Revocable Trusts. Termination results from the trustor-transferor's exercise of the power of revocation and the property is transferred by the trustee back to the trustor-transferor.

(3) Trustor Reversion Trusts. The trust term did not exceed 12 years in duration and, on termination, the property reverts to the trustor-transferor.

(4) Interspousal Trusts. Termination results in a transfer to which the interspousal exclusion applies.

(5) Parent-Child or Grandparent-Grandchild Trusts. Termination results in a transfer to which the parent-child or grandparent-grandchild exclusion applies, and for which a timely claim has been filed as required by law.

(6) Proportional Interests. Termination results in the transfer to the beneficiaries who receive the same proportional interests in the property as they held before the termination of the trust.

(7) Other Trusts. Termination results in the transfer from one trust to another and meets the requirements of (1), (2), (3), (4), (5), or (6) of subdivision (b).

(e) For purposes of this rule, the term "trust" does not include a Massachusetts business trust or similar trust, which is taxable as a legal entity and managed for profit for the holders of transferable certificates which, like stock shares in a corporation, entitle the holders to share in the income of the property. For rules applicable to Massachusetts business trusts or similar trusts, see Section 64 of the Revenue and Taxation Code and Rule 462.180, which address legal entities.

**(g) Due Process. Notwithstanding any provision in property tax law to the contrary, due process prohibits an assessor from reassessing trust real property as a change in ownership upon a remainderman's taking of actual possession of that property after the effective date of Part 0.5 of the Property Tax Division of the Revenue & Taxation Code if either 1) the remainderman's legal right to take such possession vested prior to the effective date, or 2) at the time of vesting the assessor reassessed the remainderman's interest as a change in ownership under Part 0.5.**

## **VI. Proposed Amendment to Rule 462.180 – Legal Entities**

Following is petitioner's proposed amendment to Rule 462.180 in strike-out and underscore format:

(a) Transfers of Real Property to and by Legal Entities. General Rule. The transfer of any interest in real property to a corporation, partnership, limited liability company, or

other legal entity is a change in ownership of the real property interest transferred. For purposes of this rule, "real property" or "interests in real property" includes real property interests and fractional interests thereof, the transfer of which constitute a change in ownership under Sections 60 and following applicable sections of the Revenue and Taxation Code and under the applicable change in ownership provisions of the Property Tax Rules.

(b) Exceptions. The following transfers do not constitute changes in ownership of the real property:

(1) Affiliated Corporation Transfers. Transfers of real property between or among affiliated corporations, including those made to achieve a corporate reorganization if:

(A) the voting stock of the corporation making the transfer and the voting stock of the transferee corporation are each owned 100 percent by one or more corporations related by voting stock ownership to a common parent, and

(B) the common parent corporation owns directly 100 percent of the voting stock of at least one corporation in the chain(s) of related corporations.

Image

#### SIMPLE EXAMPLE

A transfer of real property by P, A, B, or C to any of the other three corporations would not be a change in ownership.

Example 1: Any transfer by C (wholly owed by A and B) to B (wholly owned by A and P) would not be a change in ownership because of those relationships and because P owns 100% of A.

If real property is transferred between non-affiliated corporations, only the property transferred shall be deemed to have undergone a change in ownership.

(2) Proportional Transfers of Real Property. Transfers of real property between separate legal entities or by an individual to a legal entity (or vice versa), which result solely in a change in the method of holding title and in which the proportional ownership interests in each and every piece of real property transferred remain the same after the transfer. (The holders of the ownership interests in the transferee legal entity, whether such interests are represented by stock, partnership interests, or other types of ownership interest, shall be defined as "original co-owners" for purposes of determining whether a change in ownership has occurred upon the subsequent transfer of the ownership

interests in the legal entity.) This subdivision shall not apply to a transfer of real property which is also excluded from change in ownership pursuant to subdivision (b)(1) (transfers between or among affiliated corporations).

**Examples of Transfers of Real Property in Legal Entities:**

Example 2: A transfer of real property from A and B, as equal co-tenants, to Corporation X where A and B each take back 50 percent of the stock. No change in ownership. However, if A and B each take back 49 percent of the stock and C receives 2 percent of the stock then there will be a change in ownership of the entire property.

Example 3: A transfers Whiteacre to Corporation X and B transfers Blackacre (equal in value to Whiteacre) to Corporation X. A and B each take back 50 percent of the stock. Change in ownership of 100 percent of both Whiteacre and Blackacre.

Example 4: Corporation X owns Blackacre and Whiteacre (both are of equal value). A & B each own 50% of Corporation X's shares. X transfers Whiteacre to A and Blackacre to B. Change in ownership of 100% of both Blackacre and Whiteacre. However, if Corporation X transfers Whiteacre and Blackacre to both A and B as joint tenants or as equal tenants in common, there is no change in ownership.

Example 5: A transfer of real property from Corporation X to its sole shareholder A. No change in ownership, even if A is an "original co-owner", because interests in real property, and not ownership interests in a legal entity, are being transferred.

(c) Transfers of ownership interests in legal entities. General Rule. The purchase or transfer of corporate stock, partnership interests, or ownership interests in other legal entities is not a change in ownership of the real property of the legal entity, pursuant to Section 64(a) of the Revenue and Taxation Code.

(d) Exceptions. The following transfers constitute changes in ownership, except as provided in (d)(4) which is an exclusion from change in ownership:

(1) Control. When any corporation, partnership, limited liability company, Massachusetts business trust or similar trust, other legal entity or any person:

(A) obtains through a reorganization or any transfer, direct or indirect ownership or control of more than 50 percent of the voting stock in any corporation which is not a member of the same affiliated group of corporations as described in (b)(1), or

(B) obtains through multi-tiering, reorganization, or any transfer direct or indirect ownership of more than 50 percent of the total interest in partnership or LLC capital and more than 50 percent of the total interest in partnership or LLC profits, or

(C) obtains through any transfer direct or indirect ownership of more than 50 percent of the total ownership interest in any other legal entity.

Upon the acquisition of such direct or indirect ownership or control, which may include any purchase or transfer of 50 percent or less of the ownership interest through which control or a majority ownership interest is obtained, all of the property owned directly or indirectly by the acquired legal entity is deemed to have undergone a change in ownership.

(2) Transfers of More than 50 Percent. When on or after March 1, 1975, real property is transferred to a partnership, corporation, limited liability company, or other legal entity and the transfer is excluded from change in ownership under Section 62(a)(2) of the Revenue and Taxation Code, and the "original co-owners" subsequently transfer, in one or more transactions, cumulatively more than 50 percent of the total control or ownership interests, as defined in subdivision (d)(1), in that partnership, corporation, limited liability company or legal entity, there is a change in ownership of only that property owned by the entity which was previously excluded under Section 62(a)(2). However, when such transfer would also result in a change in control under Section 64(c) of the Revenue and Taxation Code, then reappraisal of the property owned by the corporation, partnership, limited liability company, or other legal entity shall be pursuant to Section 64(c) rather than Section 64(d).

For purposes of this subdivision ((d)(2)), interspousal transfers excluded under Section 63 of the Revenue and Taxation Code, transfers into qualifying trusts excluded under Section 62(d) of the Revenue and Taxation Code, and proportional transfers excluded under Section 62(a)(2) of the Revenue and Taxation Code shall not be cumulated or counted to determine a change in ownership.

Examples of Transfers of Interests in Legal Entities:

Example 6: A and B each own 50 percent of the stock of Corporation X. Corporation X acquires Whiteacre from Corporation Y, an unaffiliated corporation in which neither A nor B has interests, and Whiteacre is reappraised upon acquisition. A transfers 30 percent of Corporation X's stock to C, and B later transfers 25 percent of Corporation X's stock to C. Upon C's acquisition of 55 percent of Corporation X's stock, there is a change in control of Corporation X under Section 64(c) and a reappraisal of Whiteacre.

Example 7: Spouses H and W acquire as community property 100% of the capital and profits interests in an LLC which owns Blackacre. Each of H and W is treated as acquiring 50 percent of the ownership interests as defined in subdivision (c) and Revenue and Taxation Code section 64(a). Since the selling members of the LLC are not original co-owners (because they did not transfer the property to the LLC under the Section 62(a)(2) exclusion), no change in control of the LLC would occur under section 64(c) and no change in ownership of Blackacre under section 64(d).

Example 8: A and B, hold equal interests as tenants in common in Greenacre, a parcel of real property. A and B transfer Greenacre to Corporation Y and in exchange A and B each receive 50 percent of the corporate stock. No change in ownership pursuant to Section 62(a)(2). Pursuant to Section 64(d), A and B become original coowners. A transfers 30 percent of Corporation Y's stock to C (A's child), and B then transfers 25 percent of Corporation Y's stock to D (B's grandchild). Change in ownership of Greenacre upon B's transfer to D. Parent/child and grandparent/grandchild exclusions are not applicable to transfers of interests in legal entities. However, if the same transfers were made by A and B to their respective spouses, no change in ownership pursuant to Section 63 and Rule 462.220.

(3) Cooperative Housing Corporation. When the stock transferred in a cooperative housing corporation ( "stock cooperative" as defined in subdivision (m) of Section 1351 of the Civil Code) conveys the exclusive right to occupancy of all or part of the corporate property, unless:

(A) the cooperative was financed under one mortgage which was insured under Sections 213, 221(d)(3), 221(d)(4), or 236 of the National Housing Act, as amended, or was financed or assisted pursuant to Sections 514, 515, or 516 of the Housing Act of 1949 or Section 202 of the Housing Act of 1959, or was financed by a direct loan from the California Housing Finance Agency, and

(B) the regulatory and occupancy agreements were approved by the respective insuring or lending agency, and

(C) the transfer is from the housing cooperative to a person or family qualifying for purchase by reason of limited income.

(4) Proportional Interest Transfers. Transfers of stock, partnership interests, limited liability company interests, or any other interests in legal entities between legal entities or by an individual to a legal entity (or vice versa) which result solely in a change in the method of holding title and in which proportional ownership interests of the transferors and transferees, in each and every piece of property represented by the interests transferred, remain the same after the transfer, do not constitute

changes in ownership, as provided in subdivision (b)(2) of this rule and Section 62(a)(2) of the Revenue and Taxation Code. This provision shall not apply to a statutory conversion or statutory merger of a partnership into a limited liability company or other partnership (or a limited liability company into a partnership) when the law of the jurisdiction of the converted or surviving entity provides that such entity remains the same entity or succeeds to the assets of the converting or disappearing entity without other act or transfer and the partners or members of the converting or disappearing entity maintain the same ownership interest in profits and capital of the converted or surviving entity that they held in the converting or disappearing entity.

**Examples of Excluded Proportional Interest Transfers:**

Example 9: General Partnership (GP), which owns Whiteacre and in which A and B hold equal partnership interests, converts to Limited Partnership (LP) under the Revised Uniform Partnership Act of 1994 (California Corporations Code section 16100 et seq.). As a result of the conversion, A and B each hold 50 percent of the LP interests in capital and profits. No change in ownership of Whiteacre upon the conversion, because, under Section 16909 of the Corporations Code, there is no transfer of Whiteacre. Section 62(a)(2) of the Revenue and Taxation Code does not apply. However, if A and B were "original coowners" in GP, they remain "original coowners" in LP.

Example 10: Following the conversion in Example 9, A and B each transfer 30 percent of their capital and profits interests in LP to Limited Liability Company (LLC), which is owned equally by A and B. Each retain an equal 20 percent interest in LP. No change in ownership of Whiteacre pursuant to Section 62(a)(2) because A and B own 100 percent of both LP and LLC and their respective proportional interests remain the same after the transfer. Neither section 64(c) nor section 64(d) of the Revenue and Taxation Code applies to this transfer, although A and B become "original coowners" with respect to their interests in LLC.

Example 11: A limited partnership (LP), which owns Blackacre and in which C and D hold equal partnership interests, changes its form to a limited liability company (LLC), in which C and D hold equal membership interests, by statutory merger under the California Revised Limited Partnership Act (California Corporations Code section 15611 et seq.) and the Beverly-Killea Limited Liability Company Act (California Corporations Code section 17000 et seq.). No change in ownership of Blackacre upon the change in form because under section 17554 of the California Corporations Code, there is not a transfer of property from LP to LLC. Section 62(a)(2) of the Revenue and Taxation Code does not apply. However, if C and D were "original coowners" in LP, they remain "original coowners" in LLC.

(e) Partnerships.

(1) Transfers of Real Property by Partnerships. General Rule. Except as provided by (b)(2) where the proportional ownership interests remain the same, when real property is contributed to a partnership or is acquired, by purchase or otherwise, by the partnership there is a change in ownership of such real property, regardless of whether the title to the property is held in the name of the partnership or in the name of the partners with or without reference to the partnership. Except as provided by (b)(2) where the proportional ownership interests remain the same, the transfer of any interest in real property by a partnership to a partner or any other person or entity constitutes a change in ownership.

(2) Except as provided in (d)(1)(B) and (d)(2), the addition or deletion of partners in a continuing partnership does not constitute a change in ownership of partnership property.

**(f) Due Process. Notwithstanding any provision in property tax law to the contrary, due process prohibits an assessor from treating a partner in a partnership or a shareholder in a corporation as an "original transferor" if the partner or shareholder transferred real property to the partnership or corporation prior to the effective date of Part 0.5 of the Property Tax Division of the Revenue & Taxation Code.**

**VII. Proposed Amendment to Rule 462.260 – Date of Change in Ownership**

Following is petitioner's proposed amendment to Rule 462.260 in strike-out and underscore format:

For purposes of reappraising real property as of the date of change in ownership of real property, the following dates shall be used:

(a) Sales.

(1) Where the transfer is evidenced by recordation of a deed or other document, the date of recordation shall be rebuttably presumed to be the date of ownership change. This presumption may be rebutted by evidence proving a different date to be the date all parties' instructions have been met in escrow or the date the agreement of the parties became specifically enforceable.

(2) Where the transfer is accomplished by an unrecorded document, the date of the transfer document shall be rebuttably presumed to be the date of ownership change. This presumption may be rebutted by evidence proving a different date to be the



date all parties' instructions have been met in escrow or the date the agreement of the parties became specifically enforceable.

- (b) Leases. The date the lessee has the right to possession.
- (c) Inheritance (by will or intestate succession). The date of death of the decedent.
- (d) Trusts.
  - (1) Revocable. The date the trust becomes irrevocable.

Example 1: A creates an inter vivos revocable trust that becomes irrevocable upon A's death. The date of trust in ownership is the date of A's death.

- (2) Irrevocable.

(A) The date the property is placed in trust.

Example 2: A's estate plan provides that upon A's death, property is transferred to an irrevocable testamentary trust. The date of change in ownership is the date of A's death.

Example 3: A transfers to an irrevocable inter vivos trust. The date of change in ownership is the date of the transfer.

(B) The effective date of the immediate right to present possession or enjoyment of a remainder or reversion occurs upon the termination of a life estate or other similar precedent property interest.

Example 4: A creates an irrevocable trust, granting A's wife, B, a life estate in the beneficial use of the property with a remainder to C and D who are unrelated to A and B. The creation of a life estate in B is a transfer subject to the interspousal exclusion from change in ownership. Upon B's death, however, a change in ownership occurs because on that date C and D have an immediate right to the present possession and enjoyment of the remainder.

Note: Refer to Section 462.160 for trust transfer exceptions.

**(e) Due Process - Part 0.5 of the Property Tax Division of the Revenue & Taxation Code has no retrospective effect on any owner's real property rights.**

## **VIII. No Waiver of Government Code Section 11340.7**

Petitioner does not waive Government Code Section 11340.7.

**IX. Conclusion**

**A. BOE Should Grant the Petition to Amend Rules 462.060, 462.100, 462.160, 462.180, and 462.260 for Due Process**

As described above, there are many **Pre-Enactment Owners**. Examples of such **Pre-Enactment Owners** include, but are not limited to, 1) a trust remainderman who acquired his ownership prior to the enactment of Part 0.5 of the Revenue & Taxation Code, 2) a partner in a partnership, or a shareholder in a corporation, who contributed real property to the partnership or corporation prior to the enactment of Part 0.5, and 3) a property owner who leased his property prior to the enactment of Part 0.5.

Each of these **Pre-Enactment Owners** possessed vested property rights prior to the enactment of Part 0.5. When an assessor applies Part 0.5 retrospectively against the vested interests of a **Pre-Enactment Owner**, the assessor violates the owner's due process rights.

This board is duty bound to protect the interests of all **Pre-Enactment Owners** by prohibiting assessors from violating those owners' right to due process. By granting this petition, this board will fulfill its duty.

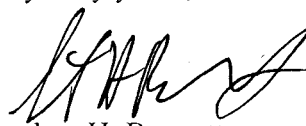
Petitioner respectfully asks the board members to grant this petition.

**B. BOE Should Depublish All Annotations That Apply Change in Ownership Law Retrospectively**

As petitioner argued earlier, there is nothing in the change in ownership property tax statutes or this board's rules that leads anybody to believe the legislature and this board intended those statutes and rules to apply retrospectively.

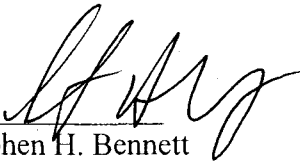
Petitioner respectfully asks the board members to order the depublishation of annotations 220.0325, 220.0326, 220.0338, 220.0332.005, 220.0780, 220.0786 and all others where BOE erroneously concludes, either expressly or impliedly, that Part 0.5 of the Property Tax Division of the Revenue & Taxation Code is applied retrospectively.

Very truly yours,

  
Stephen H. Bennett

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of eighteen (18). My business address is 26400 La Alameda #200, Mission Viejo, California 92691. I declare under penalty of perjury that I served the petition on the interested parties whose names and addresses appear on the next page, by placing a true copy thereof enclosed in a sealed envelope and mailing on March 21, 2011.

  
\_\_\_\_\_  
Stephen H. Bennett

***Letwak and Bennett***  
*Certified Public Accountants*

Page 20

Kristine Cazadd, Esq.  
Chief Counsel  
State Board of Equalization  
450 N Street  
Sacramento, CA 95814

Richard Girgado  
Deputy County Counsel  
Los Angeles County  
500 West Temple Street  
Los Angeles, CA 90012

Mary A. Lehman  
Law Offices of Mary A. Lehman  
941 Orange Avenue, Suite 531  
Coronado, CA 92118

Carole Ruwart  
Legal Staff  
State Board of Equalization  
450 N Street  
Sacramento, CA 95814

Jennifer B. Henning, Esq.  
County Counsel  
1100 K St #101  
Sacramento, CA 95814

Laurie Shade  
Senior Deputy, County Counsel  
County of Orange  
333 W. Santa Ana Blvd., Suite 407  
Santa Ana, CA 92702

Diane Olson  
Chief, Board Proceedings Division  
State Board of Equalization  
450 N Street  
Sacramento, CA 95814  
Original, and 5 copies

Timothy A Bittle  
Howard Jarvis Taxpayers Assn  
921 Eleventh Street, Suite 1201  
Sacramento, CA 95814

Thomas R. Parker  
Deputy County Counsel  
Sacramento County  
700 H Street, Suite 2650  
Sacramento, CA 95814

Claude F. Kolm  
Deputy County Counsel  
Alameda County  
1221 Oak Street, Suite 450  
Oakland, CA 94612

William L. Carter  
Deputy Attorney General  
1300 I Street  
P.O. Box 944255  
Sacramento, CA 94244

Richard Moon  
Legal Staff  
State Board of Equalization  
16715 Von Karman Ave Ste 200  
Irvine, CA 92606

John W. Ambrecht  
Ambrecht & Associates  
ATTN: Dibby Green  
1224 Coast Village Circle, Suite 32  
Santa Barbara, CA 93108

Terran Steinhart  
Attorney at Law  
4311 Wilshire Boulevard, Suite 520  
Los Angeles, CA 90010

Susan D. Blake  
400 Capitol Mall, Suite 2340  
Sacramento, CA 95814